THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.19117 OF 2005

Dated 12-09-2005

Between:

Karne Bhoomaiah,

S/o. Mallaiah, aged 47 years,

Occ:Cleaner (Shramik)

R/o.H.No.10-4-187/1,

Subhashnagar, Karimnagar and another.

…Petitioners

A N D

The A.P. State Road Corporation,

Musheerabad, Hyderabad,

Rep. by its Vice-Chairman-cum-Managing Director

And others

…Respondents

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JUDGMENT:

The petitioners were initially appointed as Cleaners on 19-02-1988 and 27-07-1990, respectively, by the A.P.S.R.T.C., after selection. Both of them were posted in the Jagtial Depot. The 1st petitioner transferred to Karimnagar-II, and there, he was promoted to the post of Helper in the year 1998. The necessity to appoint Cleaners arose in the Tyre Re-trading Stores, of the Corporation at Karimnagar. Inasmuch as the posts in that organization were not

transferable, the petitioners opted to become part of that organization. The 1st petitioner, who earned promotion by that time, decided to get reverted, so that his services may be transferred to the Re-trading Stores.

Both the petitioners worked as Cleaners in the Re-trading Stores, for number of years. However, through orders dated
24-08-2000, the petitioners and five others were posted to Karimnagar region, on the ground that they became surplus in the Re-trading Stores. Further, an endorsement is made to the effect that their seniority shall be maintained at the Re-trading Stores only. The petitioners were denied the benefit of their seniority in the post of Cleaners from the date of their initial appointment, and were also deprived of the promotion. They contend that they opted to be posted at the Re-trading Stores, in view of the service conditions prevailing therein, and once they have been transferred out of it, they cannot be made to suffer, the disadvantage of loosing their earlier service.

Sri C.Ramesh Sagar, learned counsel for the petitioners submits that the petitioners were made to understand that the service conditions in Re-trading Stores are totally different, and to avail the benefit of the same, they have foregone their seniority, of almost a decade. He contends that once the petitioners were treated as surplus, and thrown out of that organization, the petitioners cannot be made to loose on both counts.

Learned Standing Counsel for the A.P.S.R.T.C. submits that, with the transfer of the petitioners to the Re-trading Stores, they lost the benefit of the past service, and the same cannot be restored, at this stage. He contends that the posting of the petitioners, outside that organization, was on account of administrative exigency.

In the ordinary course, whenever an employee is transferred from one organization to another, at his request, he would be made to forego the benefit of seniority, at the place, from which he was transferred. As long as he continues in the organization, to which he is transferred, he cannot claim the benefit of his seniority at his previous place of employment. The instant case presents a peculiar situation. The petitioners opted to be transferred to the Re-trading Stores, after about a decade of their initial appointment. In fact, the 1st petitioner has chosen to be reverted, to pave the way for his migration to the Re-trading Stores. Both of them have staked a decade of their past service, in their anxiety to avail the benefit of the service conditions, prevailing at that place.

The petitioners were continued at the Re-trading Stores, for about eight years. Thereafter they were made-over to their former avenue of employment, on the ground that they became surplus in the Re-trading Stores. The petitioners do not have much of grievance, about their being sent out of the Re-trading Stores. However, while sending out the petitioners, a stipulation is made to the effect that their seniority shall be maintained as recorded in
Re-trading Stores. Here, it needs to be observed that, the seniority of the petitioners at that place commences from the year 1998; whereas their initial appointment was in the year 1988 and 1990 respectively.

With the transfer of the petitioners in the manner indicated above, the petitioners were subjected to two kinds of losses, *viz*., denial of the service benefits, available in the Re-trading Stores,
and, loss of seniority, from the date of their initial appointment.
The petitioners cannot be subjected to such disadvantages and unfair treatment. When the petitioners are driven out of the
Re-trading Stores, the minimum expected of, from the respondents was, that the petitioners be restored to the same position, which they would have occupied, but for their transfer to that organization. It is not as if the petitioners were driven out, on account of the disciplinary proceedings.

For the foregoing reasons, the writ petition is allowed, and it is directed that the petitioners shall be extended the benefit of their seniority in the post of Cleaner from the dates of their initial appointment *i.e*. 19-02-1988 and 27-07-1990, respectively, and they shall be promoted to the next higher post and extended the attendant benefits, on the basis of such seniority. In case the respondents pass appropriate orders, in this regard, within a period of two months from the date of receipt of a copy of this order, they shall not be under obligation to extend any monetory benefit, which was otherwise denied to the petitioners, but for the unlawful acts, referred to above. If the respondents commit default, in that regard, they shall expose themselves, to the liability, to extend the benefits, such as back-wages etc., on account of notional promotions.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.12-09-2005.

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